TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 111.

THE CENTRAL OF GEORGIA RAILWAY COMPANY, PLAINTIFF IN ERROR,

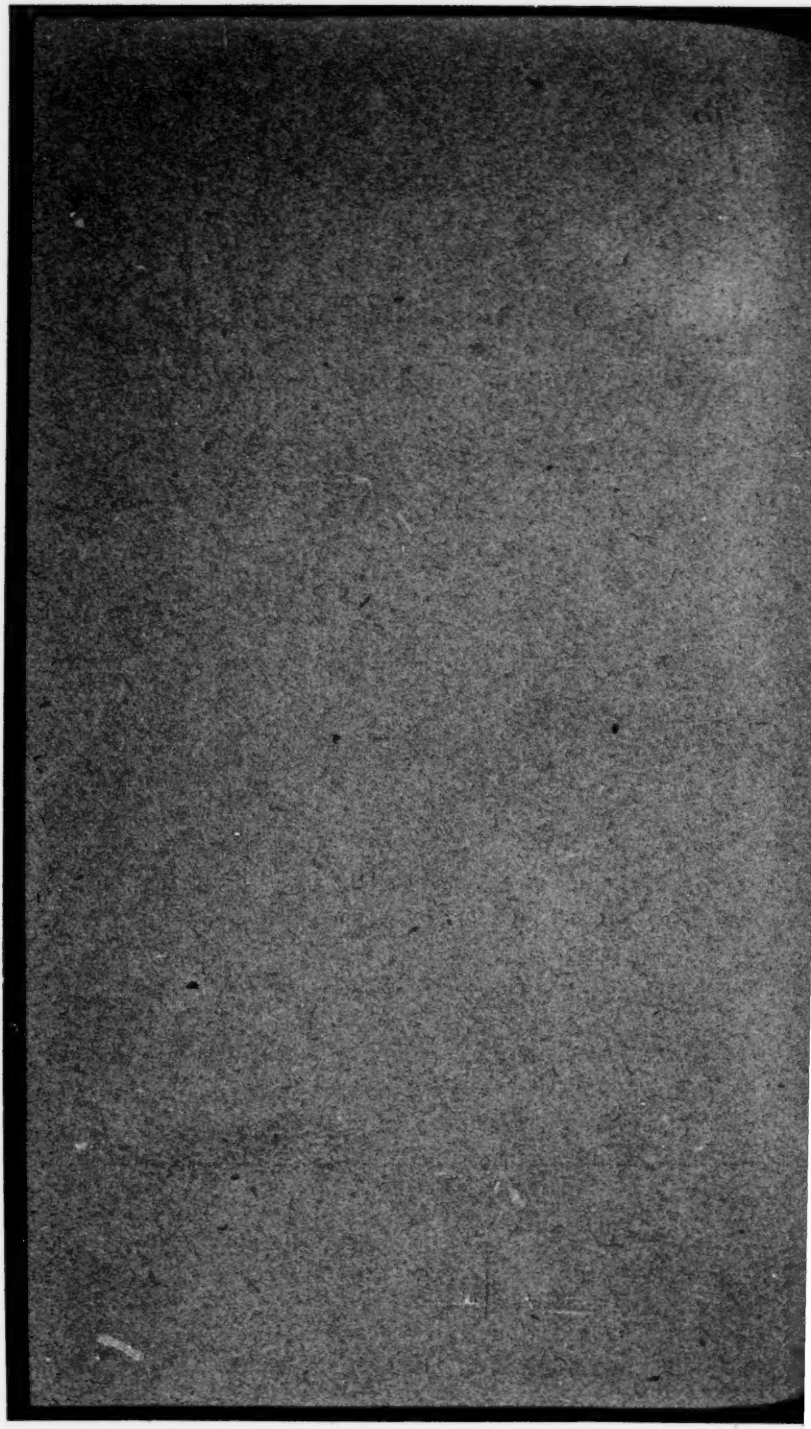
vs.

A. O. MURPHEY AND J. L. HUNT, PARTNERS, DOING BUSINESS AS A. O. MURPHEY & HUNT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED AUGUST 20, 1904.

(19,059.)



(19,059.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 408.

THE CENTRAL OF GEORGIA RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

A. O. MURPHEY AND J. L. HUNT, PARTNERS, DOING BUSINESS AS A. O. MURPHEY & HUNT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Central of Georgia Railway Company, plaintiff in error, and A. O. Murphey and J. L. Hunt, partners doing business as A. O. Murphey & Hunt, defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause

2 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the ninth day of March, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

Filed in clerk's office supreme court of Georgia M'ch 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

3 UNITED STATES OF AMERICA, *ss:*

To A. O. Murphey and J. L. Hunt, partners doing business as A. O. Murphey & Hunt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Georgia wherein The Central of Georgia Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this ninth day of March, in the year of our Lord one thousand nine hundred and three.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

GEORGIA, }
Pike County. }

On this 12th day of March, in the year of our Lord one thousand nine hundred and three, personally appeared Robert D. Feagin before me, the subscriber, a notary public in and for the county of Pike State of Georgia and makes oath that he delivered a true copy of the within citation to William W. Lambdin, counsel for A. O. Murphey and J. L. Hunt the parties defendant in the within citation, on March 12th, 1903.

ROBERT D. FEAGIN.

Sworn to and subscribed the 12th day of March, A. D. 1903.

[Seal of J. A. McCrary, Notary Public, Pike County, Ga.]

J. A. McCRARY,
N. P., Pike Co., Ga.

Filed in the clerk's office supreme court of Ga., M'ch 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

4 United States of America to the Honorable Edward D. White, one of the justices of the Supreme Court of the United States:

And now comes the Central of Georgia Railway Company, a corporation created by and existing under the laws of the State of Georgia, by its attorneys Hency C. Cunningham, Alexander R. Lawton and T. Mayhew Cunningham, Jr., and complains that in the records and proceedings, and also in the rendition of a judgment in a suit between A. O. Murphey & J. L. Hunt, co-partners doing business under name of A. O. Murphey & Hunt, plaintiffs, and the said Central of Georgia Railway Company, defendant, in the supreme court of the State of Georgia, said court being the highest court of said State in which a decision could be had in said suit, and in which final judgment was rendered against the said Central of Georgia Railway Company on the ninth day of January 1903, wherein was drawn in question the validity and legality of a statute of the State of Georgia contained in sections 2317 and 2318 of the Code of the State of Georgia adopted December 15th, 1895, said sections being as follows:

"SEC. 2317. When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next 'in good order,' has been lost, damaged or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost, damaged, or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established."

"SEC. 2318. If the carrier to which application is made shall fail to trace said freight and give said information, in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner and to the same extent as if said loss, damage or destruction occurred on its line."

the validity of such statute being attacked because it violated paragraph three of section eight of article one of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and the Indain tribes; and on the further ground that by the operation of said statute the property of the said de-

5 fendant, your petitioner, was taken without due process of law, contrary to the fourteenth amendment to the Constitution wherein it is provided that no State shall deprive any person of life, liberty or property without due process of law:

All of which questions involved the construction of clauses of the Constitution of the United States.

All of which appears in the records and proceedings in said suit; and in which the said Central of Georgia Railway Company, by its said attorneys, complains that manifest error hath happened, to the great damage of the said Central of Georgia Railway Company.

Wherefore the Central of Georgia Railway Company prays for the allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

HENRY C. CUNNINGHAM,
ALEXANDER R. LAWTON,
T. MAYHEW CUNNINGHAM, JR.,
Attorneys for Central of Georgia Railway Co.

Filed in office of clerk of supreme court of Ga., March 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

6 Supreme Court of the United States.

CENTRAL OF GEORGIA RAILWAY Company *vs.* A. O. MURPHEY and J. L. HUNT. } Error from the Supreme Court of Georgia.

Know all men by these presents: That the Central of Georgia Railway Company, principal, and the American Surety Company of New York, security, are held and firmly bound unto the said A. O. Murphey and J. L. Hunt, co-partners doing business under name of A. O. Murphey & Hunt, in the sum of one thousand dollars, to be paid to the said A. O. Murphey and J. L. Hunt, for which payment well and truly to be made we bind ourselves and each of us jointly and severally, and each of our successors and assigns, firmly by these presents.

Sealed with our hands and dated this twentieth day of February, 1903.

Whereas, the above-named Central of Georgia Railway Company has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the supreme court of Georgia:

Now, therefore, the condition of this obligation is such that if the above-named Central of Georgia Railway Company shall prosecute the said writ of error to effect, and answer all costs and damages

should it fail to make good its plea, then this obligation to be void, otherwise to remain in full force and virtue.

CENTRAL OF GEORGIA RAILWAY COMPANY,
[SEAL.] By JOHN M. EGAN, *President.*

Attest: T. F. SMITH,
Ass't Secretary.

Sealed and delivered in presence of
GEO. H. RICHTER,
Notary Public, Chatham County, Ga. [SEAL.]

7 AMERICAN SURETY COMPANY OF NEW YORK,
By JAMES SULLIVAN,
Resident Vice President.

Attest: G. A. MERCER, JR.,
Res. Ass. Secretary. [SEAL.]

Approved 9th day of March, 1903.
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

Filed in clerk's office of supreme court of Ga. M'ch 12, 1903.
Z. D. HARRISON,
C. S. C., Ga.

8 In the Supreme Court of the United States.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error,
vs.
A. O. MURPHEY and J. L. HUNT (Co-partners under the Name of A. O. Murphey & Hunt), Defendants in Error.

Assignment of Errors.

And now comes the Central of Georgia Railway Company by Henry C. Cunningham, Alexander R. Lawton and T. Mayhew Cunningham, Jr., its attorneys, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to-wit:

First. In that the statute, adopted by the legislature of the State of Georgia, contained in sections 2317 and 2318 of the Code of the State of Georgia, adopted December 15th, 1895, which sections are as follows:

"SEC. 2317. When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next 'in good order,' has been lost, damaged or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost; damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established."

"SEC. 2318. If the carrier to which application is made shall fail to trace said freight and give said information, in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner and to the same extent as if said loss, damage or destruction occurred on its line."

is invalid when applied to this case (the case being one of a shipment from a point within the State to a point without the State) because such statute is a regulation of commerce among the several States of the United States, and is in violation of the exclusive power of Congress to regulate such commerce under paragraph III of section
9 & 10 VIII of *of* article I of the Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and among the several States.

Second. That said statute is contrary to the fourteenth amendment of the Constitution of the United States, wherein it is provided that no State shall deprive any person of life, liberty or property without due process of law; the operation of said statute being to deprive the Central of Georgia Railway Company of its property without due process of law.

Wherefore the said Central of Georgia Railway Company prays that the judgment of the said supreme court of Georgia be reversed, and that said court be ordered to enter a judgment declaring said statute to be null and void on the grounds aforesaid.

HENRY C. CUNNINGHAM,
ALEXANDER R. LAWTON,
T. MAYHEW CUNNINGHAM,
Attorneys for Central of Ga. Railway Co.

Filed in clerk's office supreme court of Ga. M'ch 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

11 GEORGIA,)
Pike County.)

Be it remembered that at the April term, 1902, of Pike superior court, the Honorable E. J. Ragan, one of the judges of the superior court, then and there presiding, there came on to be tried on the 7th day of April in said year, the case of A. O. Murphy & Hunt against the Central of Georgia Railway Company, the same being an action for damages to a car load of grapes. Both parties announced ready, and the defendant company demurred to the petition of the plaintiffs upon the several grounds set out in the original and amended demurrer, which demurrer the court overruled; said demurrer is a part of the record in the case, and the Central of Georgia Railway Company alleges that the court committed error in overruling said demurrer.

The Central of Georgia Railway Company, defendant in said action, tendered to the court, during said term of said court, and had the same certified, a bill of exceptions, *pendente lite*, alleging error in overruling the demurrer of the Central of Georgia Railway Company, which bill of exceptions *pendente lite*, together with the original demurrer and amendments thereto, are a part of the record in said case.

The case went to trial before a jury and the jury, under the charge of the court, returned a verdict for the plaintiff against the Central of Georgia Railway Company for the sum of four hundred and thirty-four and 55/100 ($434.55) dollars, whereupon the Central of Georgia Railway Company, during said term of Pike superior court, filed its motion for new trial and subsequently amended the same, which original motion and amendments thereto are a part of the record in said case. By an order taken during said April term of Pike superior court, said motion for new trial was heard and determined in vacation, to wit: on the 23rd day of April 1902, which order, setting the motion for new trial to be heard on said day, is a part of the record in said case. The several grounds for new trial were approved by the court and form a part of the record in said case. A brief of the written and oral evidence in said case *were* approved by the court and form a part of the record in said case.

12 The said motion for new trial came on to be heard on the said 23rd day of April 1902, and the same was overruled by the court on each and every ground taken therein. The order and judgment of the court overruling said motion for new trial is a part of the record in said case.

And now comes the Central of Georgia Railway Company, within thirty days from the date of the trial of said case, the date on which its demurrer was overruled, and within thirty days from the adjournment of Pike superior court, and within thirty days from the judgment overruling its motion for new trial, and tenders this, its bill of exceptions, and alleges that the court committed error as follows:

1st. In overruling the demurrer and amended demurrer as hereinabove alleged, and which appears from the record in said case.

2nd. The Central of Georgia Railway Company alleges error in the judgment of the court as set out in the bill of exceptions *pendente lite* which was filed during said term of Pike superior court, and which is a part of the record in said case.

3rd. The Central of Georgia Railway Company alleges error in the court overruling its motion for a new trial on the grounds taken therein.

The plaintiff in error, The Central of Georgia Railway Company, specifies the following portions of the record as material to a clear understanding of the errors complained of, to-wit:

1st. The petition filed by the plaintiffs.

2nd. The demurrer and amendments to the demurrer.

3rd. The plea and answer of the Central of Georgia Railway Company.

4th. The order overruling the demurrer and amendments thereto.

5th. The bill of exceptions, *pendente lite*, which alleges error on the part of the court in overruling the demurrer as amended of the Central of Georgia Railway Company.

6th. The verdict of the jury.

7th. The judgment of the court thereon.

8th. The motion for new trial and amended motion for new trial with all the entries thereon.

9th. The order taken in term time setting the motion for new trial to be heard in vacation.

13 10th. Approved brief of evidence in said case.

11th. Judgment of the court overruling the motion for new trial.

Plaintiff in error presents this, its bill of exceptions, and asks that the same may be certified in terms of the law that the errors committed as herein set forth may be reviewed and corrected.

HALL & CLEVELAND &
R. L. BERNER,
Att'ys Plaintiff in Error.

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Pike county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the October term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected. This May 5th, 1902.

E. J. REAGAN,
Judge Superior Court, Flint Circuit.

Due and legal service of the within bill of exceptions acknowledged, copy and all other and further notice and service waived.
May 5th 1902.

W. W. LAMBDIN,
Att'y for Def'ts in Error, Barnesville, Ga.

Filed in office May 7, 1902.
J. B. MATHEWS, *Clerk S. C.*

14 ZEBULON, GA., *May 14th*, 1902.

I hereby certify that the foregoing is the true original bill of exceptions, filed in this office, in the case therein stated; and that a copy thereof has been made and is now of file in this office.
Witness my signature and the seal of said court hereto affixed, the day and year last above written.

J. B. MATHEWS, *Clerk*.

15 Pike County Court, Dec. Term, 1897.

A. O. MURPHEY & HUNT
vs.
CENTRAL OF GEORGIA RAILWAY COMPANY. } Appeal to Superior Court.

Copy of Original Petition.

To the county court of said county:

The petition of A. O. Murphey & Hunt, a partnership composed of A. O. Murphey and J. L. Hunt, shows:—

1. That the Central of Georgia Railway Company is a corporation of said county and has a place of business in the town of Barnesville in said county, and that W. J. Vandivere is agent at said place of business of said corporation.

2. That the Central of Georgia Railway Company is indebted to petitioner in the sum of four hundred thirty four and 55/100 ($434.55) dollars, besides interest from August 5, 1897, by reason of the following facts:

3. That on July 31, 1897 petitioners shipped a car load of grapes from Barnesville, Ga. consigned to Rocco Bros. Omaha, Neb. by way of the Central of Georgia Railway Company, and that said grapes were delivered to said company at Barnesville, Ga. said car containing two thousand (2000) baskets of grapes.

4. That said freight was to be conveyed by more than two common carriers, the initial carrier being the said Central of Georgia Railway Company, and said freight was shipped under a contract of shipment in which it was provided that the responsibility of each carrier shall cease upon delivery to the next "in good order."

5. That said grapes were greatly damaged on the route between

Barnesville and Omaha, so much damaged that their value for market was almost entirely destroyed. The damage resulted from the fact that said grapes were allowed to become saturated with water so that the grapes became moulded, and on examination were found to be loose from the stems and decayed on account of having become saturated with water on the route as aforesaid. The baskets were also badly soiled and discolored by cinders and other things.

6. That the water which so saturated the said grapes, it is
16 supposed, flowed into the car from the ice boxes which had by the negligence of the carriers become filled and choked up with cinders and other debris, thereby causing an overflow of water from the ice boxes attached to said car.

7. That all of this damage was the result of the negligence of the common carriers on the route between Barnesville and Omaha.

8. That when the grapes were shipped from Barnesville they were in first class — and were of the finest quality, and had they been shipped in a careful manner and delivered to consignees at Omaha they would have brought the highest market price for grapes. That the market price for said grapes on Aug. 5th, the date of their arrival in Omaha, was thirty-five (35c.) cents per basket, and that said car would have been worth seven hundred (700) dollars.

9. But the said grapes, on account of their damaged condition, only sold for two hundred sixty-five and 45/100 ($265.45) dollars, and that price was only obtained after a great deal of trouble, the grapes being in such poor condition, that the parties purchasing them would refuse to accept them after they were delivered.

10. That the freight charges on said car load of grapes were two hundred twenty-one and 50/100 ($221.50) dollars. That after deducting said freight charges from the sum received for the grapes only forty-three and 95/100 ($43.95) dollars remained. Petitioner says that on account of the negligence of the common carriers on said route they were damaged to the amount of the difference between seven hundred dollars, the market price of the grapes had they been shipped in good order, and two hundred sixty-five and 45/100, the amount they actually received for the grapes, to wit, the sum of four hundred thirty-four and 55/100 dollars.

11. Petitioners further say that they applied to the said Central of Georgia Railway Company, the initial carrier on said route, and served them with an application in writing on August 20th, 1897, in which they requested that they, the said Central of Georgia Railway Company, trace said freight and inform applicants in writing when, how, and by which carrier said freight was damaged, and to furnish
17 petitioners the names of the parties and their official position, if any, by whom the truth of facts set forth in said information can be established, and that the said Central of Georgia Railway Company failed to trace said freight and give said information in writing within the thirty —, as they were required by law, wherefore they have become indebted to petitioners the amount of the damages to said grapes as above set forth. A copy of said ap-

plication which was served upon the said Central of Georgia Railway Company is hereto attached marked "Exhibit A."

12. Petitioners further say that in addition to the said sum of four hundred thirty-four and 55/100 ($434.55) dollars, the said Central of Georgia Railway Company is indebted to them for the interest on said sum from August 5th, 1897.

13. That said Central of Georgia Railway Company refuses to pay your petitioners the amount of principal and interest due as aforesaid.

14. Wherefore, petitioners pray that process may issue requiring the said Central of Georgia Railway Company to be and appear at the next quarterly term of the county court to be held in and for said county to answer your petitioners' complaint.

S. N. WOODWARD,
Petitioners' Attorney.

"EXHIBIT A."

GEORGIA,
Pike County.

To the Central of Georgia Railway Company:

The application of A. O. Murphey & Hunt, a partnership composed of A. O. Murphey & J. L. Hunt, shows:—

1. That on July 31st, 1897, they shipped a car load of grapes from Barnesville, Ga. consigned to Rocco Bros., Omaha, Neb. by way of the said Central of Georgia Railway Company.

2. That the car in which said grapes were shipped was L. & N. # 16739, said grapes consisted of two thousand (2000) baskets, and the net value of said grapes was over five hundred dollars.

3. That said freight was to be conveyed by more than two common carriers, the initial carrier being the said Central of
18 Georgia Railway Company, and under the contract of shipment the responsibility of each carrier shall cease upon delivery to the next "in good order."

4. That said grapes on the route between Barnesville, Ga. and Omaha, Neb. were greatly damaged, so much damaged that their value for market was almost entirely destroyed. The damage resulted from the fact that said grapes were allowed to become saturated with water so that the grapes were found to be loose from the stems and moulded. The baskets were also badly discolored by cinders and other things.

5. That this damage was the result of the negligence of the common carriers on the route between Barnesville & Omaha.

6. Wherefore applicants demand of the Central of Georgia Railway Company, the initial carrier, that it trace said freight and inform applicants in writing, when, how, and by which carrier said freight (the said grapes), was damaged, and the names of the parties and their official position, if any, by whom the truth of facts set

out in said information can be established. Said information to be furnished within thirty days from the date of this application.

This 20th day of August, 1897.

A. O. MURPHEY & HUNT.
S. N. WOODWARD, *Attorney.*

Served W. J. Vandivere agent for the Central of Georgia Railway Company personally with a copy of the within original.

This Dec. 3rd, 1897.

J. H. MILNER,
Sheriff, Pike County.

A. O. MURPHEY & HUNT
vs.
CENTRAL OF GEORGIA RAILWAY COMPANY. } Complaint.

State of Georgia, Pike county, to the sheriff of said county, Greeting:

The defendant Central of Georgia Railway Company is hereby required, personally or by attorney, to be and appear at the next county court to be held in and for said county on the 3d Mon-
19 day in Dec. next, then and there to answer the plaintiff's demand in an action of complaint.

Witness my hand and official signature as judge of said court, this 29th day of Nov., 1897.

E. F. DUPREE,
Judge C. C., P. C.

Demurrer.

And now comes the defendant and demurs to the petition in the above stated case, and for cause of demurrer says:

1st. The 4th paragraph of petition with the exhibit attached thereto shows that the bill of lading was not a contract for through carriage, and it is not alleged that the loss or damage occurred on defendant's road, nor is it alleged that the freight was not delivered to the next in good order by this defendant.

2nd. Because the act of the legislature, Code of 1895, sections 2317 & 2318, under which plaintiffs claim to hold defendant liable for the loss complained of is unconstitutional and void in this, that it requires this defendant to furnish evidence to the plaintiffs for the purpose of a personal and private claim, or lawsuit, touching the liability of another corporation to plaintiffs with which liability this defendant is in nowise connected in the contract or by law.

3rd. Because there is no cause of action set out in plaintiff's declaration and under the allegations contained in plaintiff's petition they are not entitled to recover anything of this defendant.

HALL & BOYNTON,
W. C. BEEKS,
Def't's Att'ys.

Amendment to Demurrer in Above-stated Case.

4th. Because the law under which plaintiffs claim to proceed in this action imposes upon the defendant the duty of hunting evidence with which plaintiff could make out a claim against another carrier, and — the event such evidence is not reported within a given time this defendant is made responsible for the act of another carrier with which it had no connection in carrying the goods either by contract or otherwise. Such legislative act is not a proper classification of legislation, but is arbitrary and is a violation of the constitution of this State.

5th. Because the said legislative act impairs the obligation of the contract between the plaintiffs and the defendant for carrying the goods, for the damage of which this suit is brought, by the terms of which contract this defendant is exempted from any and all liability for damages to goods beyond the end of its own line, and said act in this respect violates the Constitution of the United States.

6th. Because said law requires this defendant to procure and report to the plaintiffs certain information within a given time and on failure to do so, then without regard to whether such information could be obtained within the time prescribed, and without opportunity to defendant to be heard, the *the* act imposes upon the defendant the penalty of paying damages which are caused by another railway company—a railway company with whose carriage of the goods defendant had no connection by contract or otherwise, and such law denies the defendant due process of law and is void.

HALL & BOYNTON,
W. C. BEEKS,
Def't's Att'ys.

And now comes the defendant and by leave of the court amends its demurrer by adding the following grounds:

1st. Because the law on which the suit was brought is unconstitutional in this, that it is in violation of the interstate commerce clause of the Constitution of the United States, in that it affects in its operation the commerce between the several States over which subject matter the Congress of the United States alone has jurisdiction.

2nd. Because it is unconstitutional in this, that it subjects the property of the defendant without due process of law.

HALL & BOYNTON,
BERNER & BEEKS,
Def't's Att'ys.

And now comes the defendant at this the April term 1902 and amends its demurrer by adding the following grounds. The statute under which this suit is brought is contrary to law, the Constitution, and public policy, in that it seeks to obtain information

by statutory compulsion attaching to a failure to produce the evidence — a penalty—which information the various railroads are entitled to withhold if they so desire to do under the correlative liberty of silence guaranteed by the Constitution.

HALL & CLEVELAND,
R. L. BERNER,
Def't's Att'ys.

April Term, 1902.

The within amendments to the demurrer are hereby allowed.
E. J. REAGAN,
Judge S. C., F. C.

A. O. MURPHEY & HUNT
vs.
CENTRAL OF GEORGIA RY. CO.
} Complaint for Damages in County Court, Pike County, Dec. Term, 1897.

And now comes the defendant and reserving the right to demur and plead to plaintiffs' declaration makes answer thereto as follows:

1st. Defendant admits the allegations contained in paragraph 1.

2nd. Defendant admits that at the time mentioned in paragraph 3 there was a delivery of certain goods to them just how much or many this defendant is not prepared to say, but this defendant denies that said goods were delivered to them under any contract of through carriage or that they were received by def't for through carriage to the point designated in this paragraph.

(No number 4.)

5th. Defendant denies the allegations contained in paragraph 5 and demands proof of the same.

6th. Defendant denies the allegations contained in paragraph 6 and demands proof of the same.

7th. Defendant denies the allegations contained in paragraph 7 and demands proof of the same.

8th. Defendant denies the allegations contained in paragraph 8 and demands proof of the same.

9th. Defendant denies the allegations contained in para-
22 graph 9 and demands proof of the same.

10th. Defendant denies the allegations contained in paragrpah 10 and demands proof of the same.

11th. In answer to paragraph 11 this defendant says, that while it was not their duty to furnish plaintiffs the information demanded in the exhibit to this paragraph, but in order to serve one of their patrons, they exercised the utmost diligence in procuring the same, at the earliest moment possible, and did furnish to the plaintiffs, all the information they could obtain with the greatest dispatch possible and defendant denies that they are indebted to plaintiffs in any sum and demand proof of the allegations in this paragraph as to any indebtedness.

12th. Defendants deny the allegations contained in paragraph 12 and demand proof of the same.

13th. Defendant denies the allegations in this paragraph that they are indebted to plaintiff in any sum either for principal or interest.

And for further answer this defendant says, that while they deny that it was their duty to furnish plaintiffs with the information demanded but in order to serve the plaintiffs as one of defendant's patrons they sought to furnish plaintiffs with said information at the earliest moment possible and did furnish the same to plaintiffs on the *day after* the expiration of the time when plaintiffs' claim said information *said information* should have been furnished them. And for further plea this defendant says that they are not guilty of the wrongs and injuries complained of in plaintiffs' declaration and denies any and all liability or indebtedness to plaintiffs and of this they put themselves upon the country.

HALL & BOYNTON,
W. C. BEEKS,
Def't's Att'ys.

Demurrer Overruled.

April Term, 1902.

The within original demurrer and amendments thereto are hereby overruled.

April 7, 1902.

E. J. REAGAN,
Judge S. C., F. C.

23 *Bill of Exceptions Pendente Lite.*

In Pike Superior Court, April Term, 1902.

A. O. MURPHEY & HUNT
vs.
THE CENTRAL OF GEORGIA RAILWAY COMPANY. } Complaint.

A demurrer with amendments thereto filed to the original petition in the above stated case coming on to be heard at this the April term, 1902, the court overruled the demurrer both original and amended to which ruling of the court the defendant hereby excepts and assigns the same as error, and alleges that the court should have sustained the same on each and all the grounds therein and prays that these his exceptions be certified by the court and entered on the minutes.

This the 8th April, 1902.

HALL & CLEVELAND,
ROB'T L. BERNER,
Def't's Att'ys.

I hereby certify that the foregoing bill of exceptions is true. Let the same with this certificate be entered on the minutes. April 8, 1902.

E. J. REAGAN,
Judge S. C., F. C.

Verdict of the Jury.

We the jury find for the plaintiffs four hundred and thirty four dollars and fifty-five cents, $434.55.
April 7th, 1902.

R. A. BUCHANAN, *Foreman.*

Judgment of the Court.

Whereupon it is considered, ordered and adjudged by the court that the plaintiffs A. O. Murphey & Hunt recover of the defendant, The Central of Georgia Railway Company the sum of four hundred thirty four & 55/100 dollars ($434.55) & — costs of suit.
This April 7th, 1902.

E. J. REAGAN,
Judge S. C., F. C.

24 *Motion for New Trial.*

Filed in Office April 8, 1902. J. B. Mathews, Clerk.

In Pike S. C.

THE CENTRAL OF GEORGIA RAILWAY CO. vs. A. O. MURPHEY & HUNT. } Motion for New Trial. Verdict for the Plaintiffs.

And now comes the Central of Georgia Railway Company and moves to set aside the verdict in the above stated case on the following grounds:
1st. Because the verdict is contrary to law.
2nd. Because the verdict is contrary to the evidence strongly and decidedly against the weight of evidence and without evidence to support it.

HALL & CLEVELAND,
W. C. BEEKS &
R. L. BERNER,
Movant's Att'ys.

It appearing to the court that the movant is unable to complete this motion for new trial during the present term of the court for the reason that the stenographer is unable to translate his notes, it is or-

dered that the hearing of said motion be set for the 23rd day of April, 1902 at McDonough, Ga. and it is further ordered that the movant have until said time in which to perfect and complete by amendment and otherwise and have the grounds thereof approved by the court a brief of the evidence, the said motion, amended motion and brief to be thereafter filed as provided by the order of the court.

E. J. REAGAN,
Judge S. C., F. C.

Due and legal service acknowledged on the within motion for new trial of the same, rule *nisi* & copy rule *nisi* and all further service waived. Service on ordered also acknowledged and copy waived.

April 8, 1902.

W. W. LAMBDIN,
Att'y for Pl'ffs.

Amended Motion.

Filed in Office April 26, 1902. J. B. Mathews, Clerk S. C.

And now comes the movant and amends its motion for motion for new trial by adding the following grounds:

1st. Because the court erred in rejecting the evidence of A. O. Murphey as herein set: There was no allegation of ownership of the fruit in the petition except the statement in its second
25 paragraph that plaintiffs had been damaged in the amount set out therein by injury to a car load of grapes. The defendant denied the truth of this paragraph. On the trial of the case A. O. Murphey one of the plaintiffs voluntarily testified that the fruit did not belong to the plaintiffs but his wife, that the fruit was the property of his wife. On motion of plaintiff's attorney the court excluded this evidence over the objection of defendant who insisted that the testimony was admissible to disprove the fact that plaintiff had been damaged. The court erred for this reason in ruling out said evidence.

2. Because the court erred in refusing to give in charge the following written request of defendant's counsel: "If you believe from the evidence that the act of 1890–1 embodied in sections 2317 & 2318 of the Civil Code of 1895 restricted the railroad to a period of time within which to trace the grapes in this case and ascertain when, where, how and by which carrier said grapes were damaged, and the names of the persons by whom the facts as to the damage could be established, is unreasonable under the facts of this case, then I charge you the statute is inoperative as to this transaction and you should find for the defendant." To refuse to give this charge was error. 1. Because an unreasonable statute will not be enforced by the courts. 2. Because a statute for the compliance with which sufficient time is not prescribed by its terms and which for that reason is unreasonable and cannot be executed by the per-

sons to whom it is intended to apply, will not be upheld — enforced by the courts. 3. Because the law does not require a citizen or person to do an impossible thing. 4. Because it was apparent under the admitted facts of this case that it was impossible to trace this fruit, and therefore the charge was applicable.

3rd. Because the court erred in refusing to give in charge to the jury the following written request of defendant's counsel: "If you believe from the evidence that the defendant Co. made an honest effort in good faith to procure the information asked and that it was impossible for the company to obtain such information in the 30 days, then you should find for the defendant." It was error for the following ground: If the defendant really and in good faith
26 made an honest effort to procure this information in the 30 days and failed to do so it was a compliance with the law and is a good defense. For this reason it should have been charged and to refuse it was error.

4. Because the court erred in charging, without qualification the following: "Under these admissions (that plaintiff had made of the defendant to trace the grapes and that the defendant had failed to furnish the information in 30 days) if you believe that the plaintiff delivered the grapes to the defendant to be shipped to Omaha, Nebraska, and if you further believe that they were damaged en route by any of the connecting lines of carriers, the plaintiff would be entitled to recover in this case whatever damages he has sustained; and that would be true if the damages resulted from the negligence of either of the connecting carriers, provided it has been shown to your satisfaction that the grapes were damaged." This is error. 1st. Because the special contract signed by both parties fixes and limits the liability of the defendant company to any injury sustained on its own line. 2nd. It is not in the power of the legislature to compel a railroad to make a contract of shipment beyond its own line. 3rd. It is not in the power of a legislature to pass an act such as the one under which the present suit is brought requiring and compelling the defendant Co. to furnish the information contemplated by the act, and especially in the time specified therein, and for that reason said act is contrary to the Constitution and public policy. 4th. The act — which the present suit is brought is contrary to the Constitution and public policy in that it seeks to obtain information by statutory compulsion which information is of a character which the various railroad companies composing the through line have a right to conceal if they so desire under "the correlative liberty of silence" guaranteed by the Constitution. 5th. The evidence of the plaintiff failed to show that the defendant Co. was liable or that it injured the grapes of plaintiff. 6th. The act under which suit was brought is utterly void and of no effect because it is impossible to perform the same in the time fixed by the act towit—30 days.

27 5th. Because the court erred in rejecting the following evidence; being the correspondence between the defendant Co.'s claim agent, J. L. Graham, and the various lines over which the

grapes in controversy were shipped between Barnesville and Omaha, and the correspondence between the officers of said various lines, and the telegrams sent by defendant Co. hurrying said information in the 30 days, and the correspondence between said def't Co. through its agent at Barnesville, and plaintiff offering the information it had at hand; on the 20th day of Sept. plaintiffs' refusal to accept the same, and the correspondence between def't company's attorneys and the plaintiffs tendering the information, as soon as it was obtained. This various correspondence was tendered and accompanied by the correspondence of J. L. Graham, the claim agent of def't company, by whom def't offered and could have proven that this correspondence was the "tracings" required by the act under which this suit was brought, and also by the evidence of Van Divere, whom, def't offered and by whom def't could have proven that he tendered the information which def't had obtained up to the 20th day of Sept. after the application was made and it was rejected by the plaintiffs.

This evidence was offered to show that the def't Co. on the day after the application was presented to it, instituted a pursuit for the information sought, and wrote to the various lines composing the through line from Barnesville to Omaha over which the grapes were shipped, asking for the information, stating that it was to be provided in 30 days. Hurried it up by letters and telegrams and in every possible way endeavored to obtain it, and that it was not obtained until after the lapse of the 30 days; that it offered on the 20th day of Sept. to give plaintiff all the information it had been able to get up to that time, and plaintiff refused to receive it and for the final purpose of showing that it was impossible in the 30 days to obtain the information asked for. The court rejected the evidence on the sole ground that the act required the defendant company to furnish the information in 30 days after the application was presented to it, and that the company could not defend by showing that it had made every possible effort and had failed to obtain it, or that it had offered to furnish in the 30 days all the infor-
28 mation it had, or that it was impossible to obtain it and that, therefore, the evidence was inadmissible. This was error, because the defendant contends that the law does not require it to do more than it was possible for human effort to accomplish, and that this proof showed that it had in good faith made every possible effort to get the facts, and had failed because it was impossible to be done, and that this constituted a good and valid defense. And because this evidence not only showed that the defendant made an honest effort in good faith to get the information, but showed further that it was impossible to comply with the statute, and for that reason the statute could not be enforced, and that this constituted a good defense.

The evidence offered and rejected is attached to this ground.

Louisville & Nashville.

Letter from J. L. Graham, claim agent of Central of Ga. Ry. Co. dated Savannah, Ga. Aug. 21st, 1897, and addressed to the following parties marked "A."

Mr. G. R. Knox, G. F. A. N. C. and St. L. Ry. Nashville, Tenn.
Mr. C. B. Compton, G. F. A. L. & N. R. R. Louisville, Ky.
Mr. M. L. Becker, G. F. A. Wabash R. R. St. Litts.

DEAR SIR: I hand you herewith a formal demand from attorneys at Barnesville, Ga. for information as to movement of a car of grapes shipped by their client to Rocco Bros. Omaha, Neb. July 31st. 1897. Under the law of this State we are required to fully answer such demand within thirty days, which in this case will expire Sept. 20. To facilitate the tracing, I would thank you to show full record of movement of this car, 16739, over your line. Your car record office will show, doubtless, detail of movement, in addition to which I would like to have seal record and statement of icing performed, also copy of bill of lading. From the delivery carrier report is asked as to the condition of shipment at Omaha, and if damaged,
29 the cause of same as far as can be determined.

An early answer will oblige,
Yours truly,

J. L. GRAHAM,
Claim Agent.

A copy of this letter was sent to all of the parties to whom this letter is addressed by U. S. mail on date above mentioned, on August 21st, 1897.

Also a copy of the application made S. N. Woodward, attorney for A. O. Murphey and Hunt on Central of Ga. R. R. Co. to trace said freight, dated August 20th, 1897, was sent to the parties to whom the above letter was addressed on Aug. 21st, 1897. The application alleged that A. O. Murphey & Hunt shipped on July 31st, 1897, from Barnesville, Ga. to Rocco Bros. Omaha, Neb. a car load of grapes by way of def't Co. That the car was L. & N. #16739, that the grapes consisted of 2000 baskets, and alleged the net value to be over $500.00 that the freight was to be conveyed by more than two common carriers, the initial being def't Co. and under the contract of shipment the responsibility of each carrier was to cease upon delivery to the next carrier "in good order;" the application alleges damages to grapes between shipping point and destination; that the damage was the result of negligence of the common carriers between Barnesville and Omaha, and demands of Central of Ga. Ry. Co. the initial carrier, that it trace said freight and inform the applicants in writing when, how, and by which carrier said freight was damaged, and the names of the parties and their official position, if any, by whom the truth of facts set out in said information can be established, said information to be furnished within 30 days from the date of the application. Application dated Aug. 20th 1897.

On Nov. 18th 1897, C. B. Compton wrote the following letter to J. L. Graham, claim agent at Savannah, Ga. of def't Co. dated Louisville, Ky. Nov. 18th, 1897 and received at Savannah Ga. Nov. 22nd 1897.

Mr. J. L. Graham, F. C. A., Savannah, Ga.:

DEAR SIR: Please note additional correspondence. Hope this will be sufficient.

Yours truly, C. B. COMPTON, *G. F. A.*

30 C. B. Compton was the general freight agent of the L. & N. R. R. Co., and his letter to Mr. Graham was accompanied by the following information, received in Savannah Nov. 22nd 1897.

LOUISVILLE, KY., *Aug. 25th*, 1897.

L. & N. car No. 16739 movements.

Received from N. C. & St. L. R. R.	5.20 a. m.	Aug. 2nd
Left Nashville	5.57 a. m.	2
Arrive Earlington	1.55 p. m.	2
Left Earlington	2.30 p. m.	2
Arrive Evansville	7.50 p. m.	2
Left Evansville	9.10 p. m.	2
Ar. Ea. St. Louis	10.15 p. m.	3
Delivered to St. Louis Bdg. R. R.	11.25 a. m.	3

(Signed) E. L. HILL,
Car Accountant.

The general yard master of the L. & N. wrote the supt. of that road an inquiry was made as follows:

AUG. 28TH, 1897.

L. & N. R. R. Co., Mr. James Ceddes, supt.

DEAR SIR: L. & N. 16739 was received from N. & C. at 5.20 a. m. Aug. 2nd in apparent good condition. Forward in train #80 at 5.57 a. m. sealed 234 east and west billed from Atlanta, Ga. to Omaha, Neb. via H 322 & H 483 & Wabash. Lane conductor, L. & N. 16739 received at Atlanta. Received at St. Louis. Do not disturb vents.

(Signed) W. H. YATES.
B. Y. M.

Under date of Sept. 15th, 1897, Mr. Maddox, conductor of L. & N. wrote to Mr. Mann, ass't supt. that he handled car #16739 from Earlington, Ky., to Howell, Ind. Seals on east and west 234 and vents on sides were closed, and says while in his charge there was no damage to grapes and were delivered O. K. at Howell, Ind.

Mr. E. Guthrie, conductor, L. & N. wrote to ass't supt. Sept. 22, 1897, that L. & N. car #16739 grapes for Omaha, Neb., Aug. 2nd, did

not receive any rough handling while in his charge. Left at
31 East St. Louis in good order under 234 seals, ventilators not disturbed. Way bill dated Aug. 3d, 1897 showing that transfer of car from L. & N. to Wabash. Shows reicing at St. Louis.

Mr. E. Dunlap, supt. Terminal R. R. ass't under date Nov. 3d 1897, to Mr. W. S. McChesney, terminal supt. L. & N. at St. Louis *with* "that investigation shows car # 16739 was received from L. & N. at East St. Louis 11.30 a. m. Aug. 3d was received at St. Louis. At this time drains were reported O. K. and ventilators closed. Car was not opened. Made delivery to Wabash at 4.10 p. m. Showing movement was fair. All this information given by Mr. Compton, G. F. A. L. & N. of date Nov. 18th 1897, was not received by Mr. Graham, claim ag't of the defendant Co. until Nov. 22nd, 1897.

Nashville, Chattanooga & St. Louis Ry.

A letter, a copy of that sent to C. B. Compton, G. F. A. L. & N. R. R. marked "A," was sent to G. R. Knox, G. F. A. N. C. & St. L. Ry. and also a copy of the application made by A. O. Murphey & Hunt on Central to trace the freight and show where damage occurred etc.

The following is the information — Mr. J. L. Graham, claim agent of Central of Ga. R. R. by G. R. Knox, G. F. A. N. C. & St. L. Ry. on Sept. 6th, 1897, touching this controversy.

Mr. Knox's letter dated Nashville Tenn. Sept. 9th, 1897, to Mr. J. L. Graham, claim ag't of Central is as follows:

Mr. J. L. Graham, F. C. A., Savannah, Ga.

DEAR SIR: Movement of car grapes shipped July 31, 1897, to Omaha, Neb. L. & N. car # 16739.

Replying to yours of Aug. 21st, file # 4610 R. beg to enclose my entire file showing movement and handling of this car over our rails. You will note that car was received from C. of Ga. at 7.20 a. m. August 1st, and was delivered to L. & N. at Nashville at 5 a. m. Aug. 2d. Car was iced to full capacity before leaving Atlanta. End vents being open as per order of shipper. Car was not iced again on our road, it travelling under instructions to reice at St. Louis.

Yours truly, GEO. R. KNOX, *G. F. A.*

32 The letter of J. D. Mansy, comptroller of N. C. & St. L. Ry. to Mr. J. C. Wrenne, general supt. dated Nashville Tenn. Aug. 25th, 1897, shows movement of car L. & N. # 16739 as follows:

Train C. of Ga. at Atlanta	7.20 a. m. Aug. 1st.
Left Atlanta	9.20 a. m. Aug. 1st.
Arrived at Chattanooga	2.20 p. m. Aug. 1st.
Left Chattanooga	6.00 p. m. Aug. 1st.
Arrived at Nashville	4.35 a. m. Aug. 2nd.
To L. & N	5.00 a. m. Aug. 2nd.

Very truly, J. D. MANEY,
Comptroller.

C. S. Evans, ass't supt. W. & A. railroad on request of gen'l supt. of N. C. & St. Louis Ry. made the following reply addressed to J. H. Peeples, C. A. Chattanooga.

DEAR SIR: L. & N. # 16739 left here Sunday morning at 9.20 Chattanooga 2.20 p. m. Car was iced to full capacity before leaving Atlanta. Bunkers full. Advise Mr. Wrenne as to passing you, if iced, and time left Chattanooga, date, and if any delay, and cause. Seal # 234, both sides. End vents open, order shipper.

Dated Atlanta, Aug. 27th, 1897.

Yours truly, C. S. EVANS.

Mr. John H. Peeples wrote following to Mr. J. C. Wrenne, gen'l supt. Nashville L. & N. # 16739, dated Aug. 28th, 1897.

DEAR SIR: This car was received by extra Aug. 1st at 2.20 p. m. side door sealed C. 234—grated end windows and was forwarded by No. 14 which was first train north. Car was not iced at this station. Records show that it was not ordered iced, but that it be iced at St. Louis. Evans advises car iced to full capacity at Atlanta, therefore not necessary to be iced here.

Very truly, JNO. H. PEEPLES,
Yard Conductor N. C. & St. L.

33 Mr. E. J. McGover, on Sept. 1st, 1897, wrote to gen'l supt. of N. C. & St. Louis Ry. that his record of L. & N. car # 16739, grapes, showed that vents were open on arrival at Nashville. Car was not re-iced there.

GRIFFIN, GA., *Sept. 24th*, 1897.

S. N. Woodward, att'y for A. O. Murphey & Hunt, Barnesville, Ga.

DEAR SIR: In reply to your communication dated Aug. 20th, addressed to the Central of Ga. Ry. Co. that it trace the shipment of a car load of grapes made by said A. O. Murphey & Hunt on the thirty-first of July 1897, consigned to Rocco Bros. Omaha, Neb. by way of said Central of Ga. Ry. Co. in L. & N. car # 16739, and inform the shippers in writing, when, how, and by which carrier said grapes were damaged, and the names of the parties by whom the facts can be proven. etc. We have to inform you that immediately upon the receipt of your demand an earnest and diligent inquiry was commenced to ascertain the information you desired. A copy of your demand was sent to M. S. Becker, F. C. A. Wabash, R. R. St. Louis, Mo.—Mr. C. B. Compton, G. F. A. L. & N. R. R., Louisville, Ky., Mr. G. R. Knox G. F. A. N. C. & St. L. Ry. Nashville, Tenn. asking an immediate report from each as to movement of said car over his own line. This request was followed up by letters and telegrams urging a full report.

Mr. G. R. Knox, G. F. A. N. C. & St. L. Ry. reports that the car was received at Chattanooga at 7.20 a. m. August 1st, and was delivered to the L. & N. at Nashville at 5.00 a. m. August 2nd.

Mr. M. L. Becker, F. C. C. of Wabash R. R. reports that the car was received from the L. & N. Ry. Aug. 3, 1897, and forwarded at 8.10 p. m. Aug. 3d, and was delivered at the O. & St. L. Ry. Aug 4th. The car was received at St. Louis by L. & N.

The car arrived at Omaha, Aug. 5th, 1897, at 8.35 a. m. and was found that the drip pipe in east end of car was stopped up with cinders and water from the iee was on car floor at east end. The grapes on car floor more or less damaged. A. M. Colbert of
34 the U. P. system made inspection and reports as to condition of car on arrival at Omaha.

Second part of letter to S. N. Woodward.

We have not been able to obtain reports from the officers and agents of the Louisville and Nashville R. R.

We are inclined to think from report made by the Wabash that the responsibility rests with the L. & N.

We will cheerfully give you an opportunity, if desired, to examine the entire file in order that you may have the full benefit of all the information we can obtain after a diligent inquiry conducted in good faith and in the most expeditious manner possible.

Respectfully yours, HALL & BOYNTON.

The Wabash Railroad Company, freight claim department,

St. Louis, *Sept. 8th*, 1897.

Mr. J. L. Graham, F. C. A. Central of Ga. Ry., Savannah, Ga.

Dear Sir: In reply to your favor of the 21st ult. enclosing formal demand from attorneys at Barnesville, Ga., for information as to movement of car of grapes shipped by their client to Rocco Bros. Omaha, Neb. July 31st, 1897, etc., wish to say we have just completed a full investigation of this matter with the following result: Car # 16739 L. & N. loaded with grapes arrived at Omaha on the morning of Aug. 5th, 1897, at 8.35 a. m. and report of its condition is made by car inspector of the U. P. system to A. M. Collett, gen'l foreman, under date of Aug. 7th, as follows: "Two drain pipes filled up solid with cinders. Bottom drain cups closed. Top trap door and inside box covers had apparently been left open, allowing cinders to blow in and fill the drain pipes previous to icing the car. Car was flooded, as water was running out of side doors. Fruit in apparently good order. Would state it took my car repairer three hours to clean out the drain pipes, etc." In addition to the above agent of the B. P. Ry. at Omaha issued Bad Order report as follows:

35 "Drip pipe at east end of car stopped up with cinders. Water from ice on car floor at east end. The grapes on car floor more or less damaged." I also enclose report of our gen'l car. acc't, showing movement over our road St. Louis to Pattenburg and copy of our billing as requested by you. I would also state for your information that the car reached Omaha with wire and lead seals # 234

on sides and O. & St. L. #88 on ends, thus indicating that the seals were not removed from car while in transit over the Wabash railroad. The ice boxes in car were examined on receipt of car at our St. Louis station from the L. & N. and the same found to be full, which would indicate that the car was iced just previous to delivery to us. If I can be of any further service to you in this matter, please command me.

Yours truly, M. L. BECKER, *F. C. A.*

Exhibited to this letter is the copy of the way bill sent as a tracer on the Wabash railroad to ascertain the movement of the train, and the answer to this attached to said letter shows the movement of car as follows:

Movement of car 16739 L. & N. from St. Louis. to Pattonsburg.
Received from L. & N. Ry. Aug. 3d. 1897.
Left Luther 8.10 p. m. Aug. 3d. train No. 97.
Arrived Moberly 4.25 a. m. Aug. 4th, Conductor Crabb.
Left Moberly 7.50 a. m. Aug. 4th, train No. 97.
Arrived Pattonsburg 5.10 p. m. Aug. 4th Conductor Rutledge.
Delivered to O. & St. L. Ry. at Pattonsburg, Aug. 4th.

Relating to 4610—R. 9/3/97.

U. S. mail.

Mr. G. R. Knox, G. F. A., Nashville, Tenn.
Mr. C. B. Compton, G. F. A., Louisville, Ky.
Mr. M. L. Becker, P. C. A., St. Louis, Mo.

36 DEAR SIRS: Referring to mine under date of Aug. 21st, to by U. S. mail, covering the movement of car grapes shipped by A. O. Murphey & Hunt, to Rocco Bros. Omaha, Neb. I am as yet without reply, and I will thank you to give especial attention in order that the desired information may reach me in the time specified, namely, 20th inst.

Yours truly, J. L. GRAHAM,
Claim Agent.

KO.

NASHVILLE, TENN., *Sept. 4th*, 1897.

To J. L. Graham:

C 2 your letter twenty-first, file 4610 R, and subsequent wires reference to movement of L. & N. 16739. Will answer you fully Monday.

GEO. R. KNOX.

CENTRAL OF GEORGIA RAILWAY CO., 9/10/97—9.30 a. m.

C. B. Compton, Louisville:

When may I expect answer to my letter Aug. 21st, my 4610 R—relating car grapes destined to Omaha, car 16739.

J. L. GRAHAM, *Local.*

The defendants have introduced all the evidence and way bill, dated July 31st, 1897, from Barnesville Ga. to Atlanta, Ga. showing the shipment of the car load of grapes, A. O. Murphey & Hunt, of Barnesville being the consignors, Rocco Bros. of Omaha, Neb. being the consignees, and the way bill shows that the car was routed via W. & A., N. & C. St. L., and L. & N. and Wabash. The shipment was made released and value limited $500.00 and it was to be iced in Atlanta and St. Louis.

37 CENTRAL OF GA. R. R. Co., *Aug. 25th*, 1897—3.25 p. m.

G. R. Knox, Nashville:

To you Atlanta August 1st. grapes Omaha, Neb. L. & N. #16739. See important letter to you by U. S. mail Aug. 21st, my 4610 R—and hasten desired information. Ans. and quote your number covering.

J. L. GRAHAM, *Local.*

CENTRAL OF GEORGIA RAILWAY CO., 9/12/97—3.45 p. m.

G. R. Knox, Nashville, Tenn.:

Please see wire 25 H. covering my 4610 R—to you by latter Aug. 21st. Will you please let me have full reply covering car grapes destined to Omaha, Neb. as requested.

J. L. GRAHAM, *Local.*

Correspondence between Mr. Graham and Mr. W. J. Van Divere, agent of Barnesville, and S. N. Woodward offered in evidence for the two fold purpose shows diligence on the part of the defendant and the part of the evidence which would have been given by J. L. Graham and W. J. Van Divere if they had been permitted to testify.

BARNESVILLE, *Sept.* 21/97.

To J. L. Graham:

Yours wire to the acc't absence of Murphey & Hunt attorney. I am unable to get answer. Murphey & Hunt refuse to answer either way in his absence and claim time expired yesterday for their demand.

W. J. VANDIVERE.

SEPT. 21ST, 1897.

Messrs. Hall & Boynton, division counsel, Griffin, Ga.

DEAR SIRS: I beg to hand you my file of papers in this matter.

38 We have not yet received reply from Louisville and Nashville railroad and I am inclined to think from the report made by the Wabash that the responsibility rests upon the L. & N. We are one day over time, due to the fact that our Barnesville agent could not, on yesterday, find claimant's attorney.

Yours truly, J. L. GRAHAM,
Claim Agent.

CENTRAL OF GEORGIA RAILWAY COMPANY, 9/16/97.

C. B. Compton, Louisville.

See my circular letter to you, August 22nd covering shipment car grapes for Rocco Bros. Omaha, Neb. Mr. Knox & Mr. Becker have been heard from and still without reply from you. Please let me have information without further delay.

J. L. GRAHAM, *Local.*

CENTRAL OF GEORGIA RAILWAY COMPANY, *Sept. 20th*, '97.

Ag't, Barnesville, Ga.

Concerning demand of Murphey & Hunt, Aug. 20th as to damage grapes L. & N. #16739. Our connections have been slow in answering. If necessary for the company to make formal answer to application today, wire quickly, and will advise you what answer to make. Would prefer, however, that the matter be handled through division counsel. Confer with Murphey & Hunt's attorneys and advise.

J. L. GRAHAM.

LOUISVILLE, KY., 9/19/97.

To J. L. Graham:

Replying to your favor of Sept. 16th, I am not yet able to answer your circular letter, Aug. 22nd, covering shipment car grapes for Rocco Bros. Omaha. Am doing all — can to hurry along.

C. B. PHELPS.

39 6th. Because the court erred in rejecting the evidence of J. L. Graham who was offered as a witness by def't company, and by whom it could have proven, and sought to prove, that he was the claim agent of the def't; that he had charge of the tracing of the freight in controversy, that he instituted the search for the information asked for by the plaintiffs, that he proceeded rigorously by letters and telegrams and urged the various lines to provide it in the *the* 30 days required by the statute, and that it was utterly impossible to comply with the statute in the 30 days, but that it was tendered as soon as it was obtained.

The error consists in this: Def't contends that as it made every possible effort in good faith to obtain the information in the thirty days and failed after such effort to obtain it, and tendered it as soon as it was obtained, that this constitutes a good defense.

(1.) Because it showed the statute could not be properly complied with, and

(2.) That it had in good faith done all it could in the 30 days, and forwarded it as soon as it was obtained.

7. Because the court erred in rejecting the letter of C. P. Evans to J. H. Peeples, dated Aug. 27th 1897, and which is copied and attached to the 5th ground of this motion. It was error to reject this for it was offered to show that the damages to the grapes was

owing to the condition of certain pipes which were left open by order of the shippers.

The error was this: The def't company should not be made liable if the damage was caused by order of the shippers in any event. The court rejected this evidence on the ground that the letter was not legal evidence of the facts right to be proven.

8. Because the court erred in rejecting the interrogatories of J. C. Norvell, J. N. McDade, J. E. Maddox, and J. W. Varner hereto attached as part of this ground. This evidence was offered to show that the cars were properly handled by this def't company, and that they were delivered to the Western and Atlantic railway by the Central of Ga. R. R. Co. in good order.

It was error to reject this evidence because it showed that
40 the def't company handled the grapes carefully and safely and delivered them in good order to the next line, and that it had fully complied with its part of the contract, and should not be made liable for the damages in any view of the case.

Interrogatories of J. C. Norvell, J. W. McDade, J. E. Maddox, and J. W. Varnon, Offered by the Defendant.

To the (1) interrogatory. All know def't but not plaintiff.

To the (2) interrogatory J. W. McDade testified: Was employed by the Central of Ga. Ry. Co. as yard conductor July 31st, and Aug. 1st, 1897 in Atlanta. Have been since in same capacity by def't Co.

J. C. Norvell testified: On July 31st and August 1st, 1897, was employed by def't Co. in Atlanta as night seal clerk, and was up to Oct. 1st, 1899 in same capacity, but is now with Southern as trackage clerk.

To (3) McDade says: The car mentioned in July 3d, that is L. & N. # 16739, shipped from Barnesville, Ga. to Omaha, Neb. and routed via W. & A., N. C. & St. L., L. & N., Wabash, A. O. Murphey & Hunt, consignors, Rocco Bros. consignees, arrived in Atlanta Ga. at 6.25 a. m. Aug. 1st, 1897 by Central railroad. Don't know the number of seal. Car from outside inspection was in good condition and O. K. on arrival in Atlanta, and in same condition when delivered by him at 7.20 a. m. August 1st, 1897 to the W. & A. or N. C. & St. L. Ry., and received by last mentioned road as in good order when so delivered to it in Atlanta, Ga. without exception.

This was next carrier in due course of shipment to destination.

J. C. Norvell says: The car inquired about in interrogatory 3d that is, L. & N. car No. 16739. arrived in Atlanta Aug. 1st at 6.25 a. m. 1897 over Central of Ga. Ry. Co. The car was in good condition when received in Atlanta. It was delivered in same condition to N. C. & St. L. or rather the W. & A. at 7.20 a. m. Aug. 1st, 1897 in Atlanta, Ga. this being the next carrier. No execution being made to its reception but received as in good order.

Cross Answers to.

McDADE.

Know the facts testified to from my own knowledge after
41 refreshing my memory by examination of memorandum made by him at the time of handling the car. The memorandum was attached to the answers. He says after refreshing his memory from the memorandum he testifies from his memory thus refreshed and not from the memorandum. He attached the original memorandum made by him at the time.

J. C. NORVELL: In answer to cross interrogatories he says he gives his testimony from his own knowledge and recollections after refreshing his recollection by the memorandum, original memorandum, made by him at the time the car came to Atlanta. He says he testifies to the facts stated by him from recollection thus refreshed and not from the memorandum but independent of it. The memorandum is attached as the original made at the time.

McDADE says he only examined car outside and found it in good and proper running condition. It was L. & N. refrigerator car, don't know contents as did not examine inside.

J. C. NORVELL says:—Only examined outside of car and inspected the seal. It was an L. & N. refrigerator car. Seal was in proper condition and not tampered with. Made no inside inspection. Can't tell of own knowledge what was in the car.

McDADE & NORVELL both say:—Did not examine icing of car and don't know condition of icing, ice boxes, drip and drain pipes or ventilators, don't know what is proper condition for these ice boxes etc. to be in as that is out of our line of business. It is proper to keep these pipes clear of cinders and other refuse. The pipes are cleaned out by running a stick or rod up the drip pipes. If not cleaned out would overflow. They can be kept cleaned out. The refrigerator Co. makes provision for the cleaning out of the drain or drip pipes in this way. A man is provided by the ice Co. or refrigerator Co. to clean out the pipes when car is re-iced. The refrigerator Co. makes provision for cleaning out ice boxes and drain in fruit shipping, and this is done by the icer when
42 icing or reicing the car. It is not proper to allow the drain pipes from such cars to become filled with cinders or other refuse. If stopped, would overflow and wet the contents of the car.

Answers of J. E. Maddox and J. W. Varnon to Direct Interrogatories.

On July 31st and August 1st, 1897, were in employment of W. & A. R. R. then run by N. C. & St. L. R. R. Maddox was foreman of an engine and Varnon was conductor of freight train. Still in

same employment by same Co. They answer that the car named and described in 3d interrogatory, that L. & N. car #16739, was received by their Co from the Central of Ga. Ry. Co. at 7.20 a. m. at Atlanta August 1st, 1897 received by J. E. Maddox for the W. & A. R. R. run by N. C. & St. L. R. R. and J. W. Varnon left with said car at 9.20 a. m. same day for Chattanooga.

J. W. VARNON says he delivered the car to the Nashville division of the N. C. St. L. R. R. about 2.00 p. m. Aug. 1st, 1897 at Chattanooga. The car was in good condition when delivered to our company by the Central of Ga. R. R. Co. so far as I know, and if anything had been the matter with it we certainly would have discovered it. The seal was No. 234 both sides. We received it as in good order and delivered it in like good order to Nashville division of N. C. & St. L. at Chattanooga, and was so received by it.

They answer cross-interrogatories.

Know the facts testified to from their own knowledge and not from the records of the railroads. They examined the outside but not the inside of the car. It was an L. & N. car and received by us as loaded with grapes. Did not go inside. They did not examine the icing and don't know condition of ice boxes, drain pipes, or ventilators. Ice boxes and drain pipes should be clean and free from trash. It is proper to keep them free from cinders and other refuse. We don't know how this is done. If not done they would clog, and the water would not run out freely. They can be kept cleaned out. The company have men to attend to this. It is not proper to allow the pipes to become filled up as they would
43 become clogged and water would not drain out.

R. L. BERNER,
HALL & CLEVELAND,
Att'ys for Movant.

The original and amended grounds of motion for new trial *is* in this case approved. This April 23rd, 1902.

E. J. REAGAN,
Judge S. C., F. C.

Brief of the Evidence in Motion for New Trial.

Filed in Office April 26th, 1902. J. B. Mathews, Clerk S. C.

THE CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
A. O. MURPHEY & HUNT.

A. O. MURPHEY sworn for A. O. Murphey & Hunt testified.

I was a member of the firm of A. O. Murphey & Hunt at the time this shipment was made. I handled 9/10 of the grapes that were

shipped. I had the car placed opposite my office on the side track and as the grapes came I went out and received them and superintended the putting of them in the car. The shipment was made either the 31st of July or the first of August 1897.

Witness certifies bill of lading and says shipment was made July 31, 1897. This is the shipment on account of which this suit was brought. I delivered these grapes to the Central of Georgia Railway Company at Barnesville Ga. July 31st, 1897. I considered the grapes in perfect condition so far as could be with perishable property when I delivered them, ¾ of them were Concords and ¼ Ines. The shipment was made to Rocco Bros. Omaha, Nebraska, I superintended the loading of 9/10 of them in the car. They were handled and washed carefully, as far as my experience went, they were picked properly. The car was a combination refrigerator car with ventilators on top. I have had experience in shipping grapes to the same destination, Omaha, Nebraska. From my experience in shipping grapes and the manner in which they were handled, if properly iced I would say they would keep six or seven days and it is my recollection, I am
44 not positive, it would require 4 or 5 days to carry them between Barnesville & Omaha. I made several shipments there. I think it was $12.40 I rec'd from this shipment. I had nothing whatever to do with icing the car or the boxes or tanks, I had never done such a thing. I had the car swept out and the grapes properly packed. The car was not iced at Barnesville. My recollection is that the car was to be iced at Atlanta, and perhaps at St. Louis. I am not certain as to any intermediate points, I said iced.

X examination:

I signed the bill of lading for Murphey & Hunt. I ordered the car from the Louisville & Nashville Railroad Company. It was a combination refrigerator car from the Louisville & Nashville Railroad Company. It was not iced at Barnesville, there was no way to ice it there. I directed it to be iced in Atlanta and St. Louis. I don't know whether it was or not. It is something like a thousand miles or over that, I think from Barnesville to Omaha, Nebraska. I examined the inside of the car when it came, so far as I know the car was all right.

Recalled:

There was 2000 baskets of grapes loaded in the car. I received the information furnished or tendered to me by Mr. Vandivere ag't of the defendant Co. at Barnesville about two days after the 30 days expired. He did not furnish me any information before the 30 days had expired. He never furnished my att'y to my knowledge with any such information. I made no arrangement with Mr. Sams about icing the car. I only gave instructions where I wanted it reiced. I gave instructions to Mrs. Vandivere agent at Barnesville. I had no connection with the icing.

PETER ROCCO, witness for plaintiff by interrogatories sworn said: I reside in Omaha, Nebraska, and was in Aug. 1897, as I am now a member of the firm of Rocco Bros. Said firm was engaged at that time in the wholesale fruit and commission business. I remember the shipment of a car load of grapes made by the plaintiffs A. O. Murphey & Hunt of Barnesville, Ga. to Rocco Bros. about the 1st of Aug. 1897. That was the only car the plaintiffs shipped to the firm during that season. The car arrived in Omaha on Sept. 5th,
45 1897. Our Mr. R. L. Young first went to inspect the car of grapes and when he examined the grapes and found them in bad condition he called me up by "phone" and wanted me to go and inspect the car, so I immediately went to the depot, examined the car of grapes in question and found them in bad condition. The grapes were mouldy and showed a great deal of rot, been wet by water running from the ice tanks, also covered with the cinders and the car was heated and had the smell of sour fruit. There was no delay in the removal or unloading of the grapes from the car on its arrival at Omaha. The grapes were sold promptly on arrival and inspection. As soon as we inspected the car and found it in the condition described, I ordered a small load to the store and thoroughly examined the grapes and found them in worse condition than at first anticipated. I went personally with some peddlers and disposed of the entire car. The market price for the goods in the condition they were in was the price we sold them for about 13 cents a basket or the total sum of $265.45. They were worth at that time in Omaha in good condition on the market the sum of 35 cents a basket. We had already sold ⅔ of the car at that price. The grapes actually sold for $265.45, the amount of freight paid was $221.50. The other expenses were commissions $26.55 and drayage $5.00. The sales netted the plaintiffs $12.40. Exhibit A is a receipted freight bill we paid on this car of grapes, the words written across the face of the freight bill were written by the agent of the railroad company. He examined the car before writing it and wrote it on there at our request as we would not pay the bill until he had done so, we asking it as a protection to the shipper. I have had no conversation recently with Mr. Eutrekin or any other railroad man in reference to said car of grapes.

Cross-examination:

Car arrived *Aug.* 5, 1897 and was delivered that day, sold immediately to peddlers who occupied 3 or 4 days in unloading it. We had nothing to do with the car after we sold it 5th or 6th Sept. except to check grapes out to peddlers, as they took them away. The car was sold entire 5th or 6th Sept. Grapes are perishable property and liable to deteriorate if allowed to remain too long in cars
46 in unremoved. Rocco Bros. did nothing to prevent further damage because they were sold as soon as car arrived, and were opened and inspected, which was the same day or early next day. They were not re-iced or removed by them. I do say that

those grapes which were next to and just above the two lower layers, if the lower layers were in a bad or damaged condition would not be damaged by reason of the damaged grapes next to them.

ROBERT L. YOUNG witness for plaintiff sworn by interrogatories testified: I reside in Omaha, Nebraska, and in Aug. 1897 was head book-keeper and general manager for Rocco Bros. of Omaha. The firm of Rocco Bros. for some time previous to 1897 and during that year and since that time were and have been and are engaged in the wholesale fruit and commission business. I remember a shipment of a car-load of grapes by the plaintiffs A. O. Murphey & Hunt of Barnesville Ga. to Rocco Bros. about the 1st of August 1897. That was the only car plaintiffs shipped to Rocco Bros. during that season. Said grapes arrived in Omaha Sept. 5th, 1897. When said grapes arrived they were in bad condition. The first two layers on the bottom of the car were water soaked and the car was badly heated and the grapes in the first two layers having fermented the heat of the car and the fermentation of the grapes in the lower tiers damaged the whole car and when the car was opened it smelt like a wine cellar or like sour fermenting fruit. I first examined the car and then Peter Rocco examined it afterwards. The cause of damage was owing to the condition of the car, the vents had been left open before the car was iced and the tanks became full of cinders and when the car was iced, shortly before getting to Omaha, the waste of the tanks had become clogged up with cinders and the water overflowed from the tanks into the car. The overflowed water reached the lower tier of grapes and caused the effects before mentioned. There was no delay so far as we were concerned in removing and unloading the grapes. When the car arrived we took out a couple of small loads immediately and when we discovered the condition the grapes were in and that the *the* parties to whom we had sold them would not accept them, we sold the same day of the arrival or the next morning the whole car to
47 peddlers. The peddlers took four or 5 days to dispose of them owing to their condition and they did not finish unloading the car until they sold the last of them. There was no delay so far as we were concerned, and the delay occasioned by the peddlers in unloading the car had no effect whatever upon the market price or the price we got for the grapes. The market price of the grapes in Omaha at the time of their arrival in the condition they were in was the price we got for them, about 13 cents a basket and there were 2000 baskets in the car. The market price of the grapes in Omaha if they had arrived in good condition would have been 35 cents a basket. We had sold about $\frac{2}{3}$ of the car at that price before they arrived. The car of grapes actually sold for the gross sum of $265.45. There was paid for freight the sum of $221.50, our charges were $26.55 for commission and $5.00 drayage making the total charge against the plaintiff $253.05, which left the net amount realized by the plaintiffs from the car $12.40. I have seen the paper attached marked "Ex. A;" it is the receipted freight bill for the

car of grapes in question; the words quoted in the 10th Int'y were written across the freight bill by the agent and representative of the Wabash road, Mr. G. M. Entrekin. The car came in over that road. These words were written on account, of the condition of the contents of the car, because we declined to pay the fr-ight until they made the notation. The man who made the notation had personally examined the stuff and we required this notation in order to protect the consignor. I recently had a conversation with the representative of the Wabash road. He wanted to know if I recalled the circumstance of the receipt of this car its condition, etc. and what we realized out of the stuff. I said we recalled the circumstances about the car but it was so late now I could not recall what we realized out of it. He asked me if we had records on file and I told him no, that we destroyed all old records every three years and am positive that this was in the last house cleaning but would look it up and if he called again would give him the information he could discover but he did not come back. Mr. Tracy, a U. P. yardman, asked me if I remembered the transaction in question. I said it was so long ago I had practically for-
48 gotten all about it but remembered the stuff was in bad order. He said he had forgotten also. I have looked it up since, a letter dated by us Sept. 11, 1897, giving an account of sales which letter was recently sent us by plaintiffs refreshed our recollection of the whole transaction.

Cross examination:

Car was delivered Aug. 5, 1897, 5th to 9th was consumed in unloading car by peddlers who had bought it, began on 5th. Car of grapes were not permitted to remain in same condition after they were received by Rocco Bros. till Aug. 11th, but car was immediately opened and inspected and some grapes taken out and whole car sold that day or early the next day. Grapes are perishable property and liable to deteriorate in value if allowed to remain in car without removal for any great length of time. They did nothing to protect the grapes, because they sold them, they were not reiced and only a small load or two was removed by Rocco Bros.

It was admitted by the defendant that plaintiffs under the tracing act had served written notice as required by the act, on the agent of defendant company at Barnesville, Ga. of date Aug. 20, 1897 and that the information requested was not furnished in 30 days.

Copy bill of lading is hereto attached offered in evidence by plaintiff.

The plaintiffs put in evidence receipt for this freight as testified to by Mr. Young with the words: "Grapes mouldy and loose from stems" written across same.

Freight, Vegetable, and Melon Bill of Lading.

Station, Barnesville, Ga.

Date, JULY 31, 1897.

Received by the Central of Georgia Railway Company. From A. O. Murphey & Hunt, in apparent good order (inward condition and value of contents unknown), the packages consigned, marked, and described as follows; which the said company agrees to carry to said destination, if on its road, or to deliver to another carrier on the route to said destination, subject in either instance to the
49 conditions named below, which are agreed to in consideration of the rate named.

Rate from Barnesville Ga. to Omaha, Neb. 94c. per 100 lbs.

Consignee, route, and destination.	Articles and marks.	Weight, subject to correction.
Consigned to Rocco Bros. Place Omaha State county Neb. Route C. W. & A. N. C. & St. L. L. & N. & Wabash Car — L. & N. No. 16739	1 car grapes 2000 baskets S. L. W. & C. Released Advanced charges $—	20,000

1. It is mutually agreed between the shipper and the transportation lines and each of them over which said property is carried: that the rate of freight shall not exceed that given above and charges advanced by said lines or either of them, except in case of change of route or destination. Notwithstanding any indorsement of this bill of lading over to any other person, the route, destination, or the consignee to whom shipped may be changed, and such change may be made by direction of the shipper, or it may be made by the carrier whenever, in its judgment, it shall appear that such change is necessary to prevent total or partial loss of the property from whatever cause occurring. Said lines shall not be responsible for any loss or damage resulting directly or indirectly from change of route or destination made under the provisions of this contract. If any such change in route or destination, shall be made, the shipper, owner, or consignee shall pay, in addition to the rate named above and charges advanced, all expenses incurred thereby, including freights for transportation over lines and parts of lines not included in the route for which said rate is named.

2. That the said several lines will not be held liable for injury to, or decay of fruit, vegetables, or melons, or any perishable freight caused by detention in consequence of an accumulation of freight

at any point or the breaking down of cars, locomotives or
50 vessels; from frost, heat, floods, fires, changes in the weather, nor from any other cause, unless such decay or injury shall be the direct result of the carriers' negligence; and the shipper, owner, and consignee hereby assume the — of proving such negligence.

3. That the property shipped hereunder may be carried under or on deck, at the option of the carrier. The carrier shall have the liberty to transfer the goods to, and transport them by lighters, barges, or any other car or vessel; to tow and assist vessels in any situation, and to sail without pilots.

4. That no carrier transporting said property, nor the property of such carrier shall be liable for loss or damage arising from jettison, guarantine, riots, strikes, accidents to boilers or machinery, any accident or perils of the seas or other waters, legal process, claims of ownership by third parties; want of proper cooperage, or insufficiency of packages in strength or otherwise, nor for the condition of packages or deficiency in contents thereof if receipted for by the consignee in good order; nor for wrong carriage or wrong delivery of goods imperfectly marked.

5. That the responsibility, either as common carrier or warehouseman, of each carrier over whose line the property shipped hereunder shall be transported, shall cease as soon as delivery is made to the next carrier or to the consignee; and the liability of the said lines contracted with is several and not joint; neither of the said carriers shall be responsible or liable for any act, omission or negligence of the other carriers over whose lines said property is, or is to be transported.

6. That unless written demand for loss or damage shall be made on the company liable therefor, or the company which actually, delivered the goods, within thirty days after delivery, no claim shall thereafter be made nor shall any suit or proceedings be instituted to recover same.

7. That if any carrier transporting this shipment shall deem it necessary to dispose of same en route, or after delivery has been tendered to and refused by consignee, in order to protect the interest of the owner and the charges of transportation, said carrier
51 is hereby empowered to act as the agent of the owner in the transaction, and will not be held responsible for more than net proceeds of sale after deducting all legitimate expenses.

8. It is further mutually agreed that every service performed under this bill of lading shall be subject to all the conditions printed and written in said bill of lading. These conditions are hereby agreed to by the shipper, and by him accepted for himself and assigns as just and reasonable.

9. In consideration of the reduced rates specified above, it is mutually agreed that the value of fruit shipments under this bill of lading shall be taken at not exceeding $500.00 per car load; vegetable shipments $200.00 per carload; melon shipments $85.00 per carload, and the carrier shall in no event be liable for any greater

sum in case of total loss or destruction; and in case of partial loss or destruction of a quantity less than carload, the liability shall be proportionate.

A. O. MURPHEY & HUNT, *Shipper.*

W. J. VANDIVERE, *Agent.*

The within is hereby approved as a true and correct brief of the evidence in the case therein stated and ordered filed as part of record.

This April 23. 1902.

E. J. REAGAN,
Judge S. C., F. C.

Upon considering the original and amended grounds of the motion for new trial in this case it is ordered that said motion be overruled and a new trial refused. Movants are allowed six (6) days in which to file the brief of evidence amended motion, charge etc. in clerk's office superior court Pike county, Ga.

This April 23rd, 1902.

E. J. REAGAN,
Judge S. C., F. C.

52 GEORGIA, }
Pike County. }

I, J. B. Mathers clerk of the superior court in and for said county do hereby certify that the within above and foregoing 4 pages contain a correct transcript of such parts of the record as in the bill of exceptions accompanying herewith are specified as material to a clear understanding of the errors complained of in the case of The Central of Georgia Railway Company plaintiff in error *vs.* A. O. Murphey & Hunt def'ts in error.

Given under my official signature and the seal of said court this May 15th, A. D. 1902.

J. B. MATHEWS,
Clerk Sup. Court, P. Co., Ga.

53 Supreme Court, Flint Circuit, from Pike County.

CENTRAL OF GEORGIA RAILWAY CO. }
vs. } No. 11.
A. O. MURPHEY & HUNT. }

And now comes the plaintiff in error and on the call of the above stated case suggests a diminution of the record in the above stated case as follows:

1st. In the first ground of the amended motion for new trial as copied by the clerk of the superior court of Pike county, the words "of defendant," are omitted after the word "objection." The defendant in the court below, plaintiff in error, here made the objection to

excluding the evidence, which is set out properly in the original first ground of the amended motion for new trial.

2nd. In the second ground of the amended motion for new trial, as copied by the clerk, the word "plaintiffs" is omitted between the words "that" and "how" in line next to last line in said ground of the motion, which word is in the original motion for new trial.

3rd. There is an error in the clerk's certificate to record in said case as follows: The clerk says "the foregoing four pages" when it should be forty-four pages.

The plaintiff in error moves the court to require the clerk of the superior court of Pike county to supply the omissions from the record and correct his certificate as hereinabove set out.

Nov. 18th, 1902.

LLOYD CLEVELAND,
R. L. BERNER,
JOHN I. HALL,
Att'ys for Pl'ff in Error.

GEORGIA, }
Fulton County. }

In person appeared before me Lloyd Cleveland, one of the counsel for plaintiff in error in the above stated case, who being duly sworn by me deposed as follows: Deponent knows that the statements contained in the foregoing suggestion of a diminution of
54 the record in the above stated case is true.

LLOYD CLEVELAND.

Sworn to and subscribed before me this Nov. 18th, 1902.

Z. D. HARRISON,
C. S. C., Ga.

Flint Circuit, Pike County.

CENTRAL OF GA. RAILWAY CO. }
vs. } No. 11.
A. O. MURPHEY & HUNT. }

It is consented by counsel for plaintiff in error and defendant in error that the foregoing suggestion of a diminution of the record is true, and that the omissions from the record set out in said suggestions are true, so that some may be used as part of the record to supply the omissions therein set out, and that the certificate of the clerk be amended as therein set out.

Nov. 18, 1902.

HALL & CLEVELAND,
R. L. BERNER,
Att'ys for Pl'ff in Error.
W. W. LAMBDIN,
Att'y for De'fts in Error.

55 Supreme Court of the State of Georgia.

ATLANTA, GA., *Jan'y 9th*, 1903.

The honorable supreme court met pursuant to adjournment. The following judgment was rendered:

CENTRAL OF GEORGIA RY. CO.
versus
A. O. MURPHEY & HUNT.

This case came before this court upon a writ of error from the superior court of Pike county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the justices concurring except Simmons C. J. disqualified and Lumpkin P. J. absent on account of sickness.

Bill of costs, $10.00.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *Feb'y* 17, 1903.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that Lloyd Cleveland paid the above bill of costs.

Witness my signature and the seal of said court affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk*.

56 CENTRAL OF GEORGIA RAILWAY COMPANY
v.
MURPHEY & HUNT. } No. 11. Flint.

1. Civil Code, §§ 2317–2318, provides: "When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next 'in good order,' has been lost, damaged, or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee, or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost, damaged, or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established. "If the carrier to

which application is made shall fail to trace said freight and give said information in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged, or destroyed, in the same manner and to the same extent as if said loss, damage, or destruction occurred on its line." Held, that the provisions of these sections are not unreasonable and arbitrary, either as to the substantial requirements thereof, or as to the time within which the requirements must be met. Nor are they such a regulation of interstate commerce as to be beyond the power of the State. Nor do the sections infringe "the correlative liberty of silence." Nor do they amount to "compulsory private discovery" by "statutory terror." Nor are they unconstitutional and void for any other reason set forth in the present case.

2. An action under the provisions of the statute above quoted brought in the name of the shipper, is well brought though it appears that the shipper is not the owner of the goods.
3. Even if the fact that it was impossible to obtain the information required by the statute within the time specified therein
57 would relieve the carrier from liability, the evidence offered to show that it was impossible to so obtain the information did not have this effect. and was therefore properly rejected.
4. There was no error requiring the granting of a new trial.

COBB, *J.*:

A. O. Murphey & Hunt, a partnership, brought suit against the Central of Georgia Railway Company, alleging that they had shipped over the lines of the defendant company a car-load of grapes from Barnesville, Georgia, consigned to Rocco Brothers, Omaha, Nebraska; that the shipment was under a contract which provided that the responsibility of each carrier should cease upon delivery "in good order" to the next carrier. That when the grapes reached Omaha they were in a damaged condition; the amount of the damages that the plaintiffs sustained by the failure to deliver the grapes in good order at their destination being set forth in the petition; that on August 20, 1897, the plaintiffs made to the defendant an application in writing, in which they requested the company to trace the freight and inform plaintiffs in writing when, where, how, and by which carrier the freight was damaged and the names of the parties and their official position, if any, by whom the truth of the facts could be established; that the defendant failed to trace the freight and give the information within thirty days, as required by law; and that by reason of this conduct the defendant became indebted to the plaintiffs in the amount set out in the petition. The defendant demurred to the petition, upon the following grounds: (1) Because the petition sets forth no cause of action, and under the allegations thereof the plaintiffs are not entitled to recover. (2) The contract referred to in the petition not being one for a through carriage, the petition is defective in that it does not allege that the loss or damage occurred on the defendant's road, nor

is it alleged that the freight was not delivered to the next carrier in good order. (3) Because the act of the General Assembly, embraced in Civil Code, §§ 2317–2318, under which the plaintiffs' action is brought, is unconstitutional and void, in that it
58 requires the defendant to furnish evidence to the plaintiffs for the purpose of a personal, private claim or lawsuit touching the liability of another corporation, with which liability the defendant is in no wise connected either by contract or by law. (4) Because the law under which plaintiffs' action is brought imposes upon the defendant the duty of hunting evidence with which plaintiffs can make out a claim against another carrier, and, in the event such evidence is not reported within a given time, the defendant is made responsible for the act of another carrier with which it had no connection in carrying the goods, either by contract or otherwise. "Such legislative act is not a proper classification of legislation, but is arbitrary and is a violation of the constitution of this State." (5.) Because the act under which the suit is brought impairs the obligation of the contract between plaintiffs and defendant for carrying the goods; the defendant being, under the contract, exempted from liability for damages to goods beyond its own lines. (6) Because the law in question requires the defendant to procure and report to plaintiffs certain information within a given time, and on failure to so report, then, without regard to whether such information could be obtained within the time prescribed, and without opportunity to the defendant to be heard, the act imposes upon the defendant the penalty of paying damages which were caused by another railway company with which the defendant had no connection by contract or otherwise; such law denying to the defendant "due process of law." (7) Because the law in question is in violation of the interstate commerce clause of the Constitution of the United States. (8) Because such law deprives the defendant of its property without due process of law. (9) Because the act is contrary to law, the Constitution, and public policy, in that it seeks to obtain information by statutory compulsion, attaching a penalty to the failure to produce information which the various railroads are entitled to withhold, if they desire to do so, under the correlative liberty of silence guaranteed by the Constitution. The demurrer was overruled, and the case proceeded to trial and resulted
59 in a verdict in favor of the plaintiffs. A motion for a new trial filed by the defendant was also overruled. The defendants assigns error upon the judgment overruling the demurrer and the judgment refusing to grant a new trial.

1. This suit was brought under the provisions of the Civil Code, §§ 2317–2318, which are quoted in the first headnote. The petition set forth a cause of action if the law in question is valid. In passing upon the assignment of error complaining that the court erred in overruling the demurrer, it becomes necessary to determine only one question, and that is, whether this law is unconstitutional for any reason assigned in the demurrer. If it is a valid law, the other grounds of the demurrer not relating to the constitutionality

of the law were not well taken. We do not think the statute is subject to any of the exceptions taken in the demurrer. It is too well settled now to admit of question, that when private property is "affected with a public interest," the owner of such property "grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public for the common good, as long as he maintains the use." Munn *v.* Illinois, 94 U. S. 113. It is also equally well settled, that the incorporation of a railroad company by a State and the granting of special privileges to carry out the object of incorporation, particularly the authority to exercise the State's right of eminent domain, and the obligation assumed by the acceptance of the charter to transport all persons and merchandise upon like conditions and for reasonable rates, affect the property and employment with a public use, and thus subject the business of the company to legislative control in the interest of the public. Georgia Railroad Company *v.* Smith 128 U. S. 174. It becomes necessary to determine in the present case whether the statute in question is of such a character as to come within the principles just referred to. A railroad company is not compelled to make a contract to forward goods beyond its own line. Coles *v.* Railroad Company, 86 Ga. 251. See also State *v.* Railroad
60 Company, 104 Ga. 437. But when it receives goods consigned to a point beyond the terminus of its own line, it undertakes to transport them to their destination, and if the goods are lost it will be liable therefor, in the absence of a contract otherwise limiting its liability. Falvey *v.* Railroad Company, 76 Ga. 597; Central Railroad Company *v.* Fruit Exchange, 91 Ga. 389. It may, however, make a contract for the transportation of goods beyond the terminus of its own line, and stipulate in such contract that its liability shall cease when the goods are delivered to the next carrier; thus making itself liable only for damages or loss occurring while the goods are in its possession. Central Railway Company *v.* Avant, 80 Ga. 195; Richmond & Danville Railroad Co. *v.* Shomo, 90 Ga. 500. In many instances it is to the interest, not only of the shipper but also of the carrier, that the contract entered into should provide for a through shipment of goods to their destination over the connecting lines of the initial carrier. In order to secure business where the goods are to be transported to a distant point, it is necessary that the carrier should have traffic arrangements with its connecting lines, by which the shipper may become entitled to a through bill of lading, securing transportation over all the lines between the initial point and the point of destination. Especially is this true in regard to goods of a perishable nature. A carrier which holds itself out to carry such goods would secure little custom from shippers of that class of goods unless it was in a position to give reasonable assurances that the goods would not be subjected, at the terminus of the initial carrier's line, to the delays incident to shipments upon a bill of lading the undertaking of which is accomplished when the goods reach the terminus of the first carrier.

The carrier may, under the law, refuse to issue bills of lading

to points beyond its own line, but a carrier that would adopt such a rule would do little business in the transportation of goods to distant points, especially at places where there were other competing carriers who would issue through bills of lading to points beyond their own lines. It thus being often to the interest of the
61 carrier to issue a through bill of lading in order that it may secure business, and the law allowing the carrier in such cases to limit its liability to loss or damage while on its own line, is it an unreasonable requirement, when under such circumstances a loss occurs beyond its own line, that the initial carrier shall, upon demand, furnish to the shipper, within a reasonable time, information as to the place at which the loss or damage occurred? If a through contract were for the sole interest of the shipper, such a requirement might be said to be unreasonable; but when such a contract is at least for the joint interest of both in all cases, and in many instances the making of such a contract would be the only means of securing the business for the carrier, it does not seem to be beyond the bounds of reason to require the carrier to furnish to the shipper information as to the point at which his goods were lost or damaged. It is much easier for the initial carrier to obtain this information than it would be for the shipper. Carriers, through business arrangements with the connecting carriers, are so intimately associated with each other, and each one is so thoroughly conversant with the systems of the others, that it is much easier for a carrier to obtain this information than a shipper. In fact, it is a practical impossibility in many instances for the shipper to obtain the information himself, and a refusal or failure on the part of the initial carrier, or one of the connecting carriers, to undertake to locate the point at which the loss or damage occurred, amounts practically to a denial of redress to the shipper of goods that have been lost or damaged. The well-known fact that as a general rule the shippers, under such contracts, were absolutely helpless where the goods were lost or damaged, was the motive which prompted the passage of the statute now under consideration. The statute is nothing more or less than a legislative declaration that where a railroad company in its own interest, to secure business, makes a contract to transport goods beyond its own terminus, and limits its liability to loss or damage upon its own line, in the interest of those who deal with the company, who come in contact with it as a public carrier, in the interest of shippers, that is, in
62 the interest of the public, the railroad company making such a contract shall, when the goods are lost or damaged in transit, be required to furnish to the shipper such information as that he may make a legal demand upon those who are responsible for the loss or damage. The right to control by legislative enactment in the interest of the public a corporation of this character is unquestioned, and in the legislative control of the character indicated in the law now under consideration we see nothing unreasonable or arbitrary. See, in this connection, Richmond Railroad Co. *v.* Tobacco Co. (Va.), 24 S. E., 261.

It is said, though, that even if the statute in question is a reasonable regulation in regard to requiring the carrier to furnish the information therein mentioned, that provision is unreasonable which fixes the time within which the information is to be furnished before the effect of the statute is to impose a penalty upon the initial carrier for the failure to give the information. Of course, if an act of the General Assembly imposes a penalty upon an individual or corporation for a failure to perform a given act within a given time, and it is manifest that the character of the act is such that the courts could take judicial notice that it could not be performed within the time required, then it would be the duty of the courts to declare such legislation invalid as an effort on the part of the lawmaking body to deprive a person of his property without due process of law. On the other hand, if the General Assembly has a right to declare that a person shall do a given thing, and it provides that this act shall be performed within a given time, and the court cannot judicially know that it is impossible to do the thing required within the time fixed for its performance, then it is not within the power of the court to declare that the legislation is invalid upon its face. If under the operation of such a statute in a given case it should conclusively appear that it was impossible for a person against whom proceedings were had under the statute to perform, within the time required by the statute, the act thereby imposed, the question as to whether there would be any liability under the statute would arise as a matter for decision. In
63 these days when it is a matter of such common knowledge, that the courts judicially know that railroad companies engaged in the transportation of persons and freight among the several States conduct their business with such facility by means of the telegraph and other agencies, that when it becomes necessary in their own interest to secure information in regard to the commonest details of the simplest transaction they can do so in a very short space of time, a court would stultify itself that would hold as a matter of law that thirty days was not a reasonable time for a carrier whose principal office was in Georgia to secure information as to where a car-load of grapes was lost or damaged which was transported from a point in this State to Omaha, Nebraska. If information on any point involving the same amount of investigation were needed for its own business, it could be ascertained in a much less time than thirty days, and it is not unreasonable to require that it should use the same degree of diligence where one of its shippers is interested.

The case of Wallace *v.* Railway Company, 94 Ga. 732, which lays down the doctrine of "correlative liberty of silence," and that "compulsory private discovery" can not be enforced by "statutory terror," has no application whatever to the present case. This is also true of the case of Ohio Ry. Co. *v.* Lackey, 78 Ill. 55, where it was held that an act requiring railroad companies to pay the costs of inquest and the costs of burial of all persons who died on their cars was invalid, so far as it attempted to make such companies liable where they had

violated no law and had been guilty of no negligence. The same is to be said of the case of Bielenberg *v.* Railway Company, Mon. 20 Pac. 314, where it was held that a statute of Montana which provided that a railroad company which damaged or killed a horse should be liable was invalid in so far as it imposed liability upon corporations that were not negligent in the act complained of. It certainly can not be said that the statute under consideration is an impairment of the obligation of the contract made by the plaintiffs with the defendant, inasmuch as the statute was enacted long before the contract was entered into. Nor is the law under review such a regulation of commerce among the several States as to be violative of that clause of the Constitution of the United States
64 which grants to Congress the exclusive right to regulate commerce among the several States. While a regulation of the character set forth in the statute under consideration might, in some remote degree, bear upon the matter of interstate commerce, it is in no sense such a regulation of that commerce as that the State would be inhibited from making it. In a broad sense, any regulation which touches at all persons or instrumentalities engaged in interstate commerce would be a regulation of that commerce; still many such statutes have been held not to encroach upon the right of Congress to control the matter of commerce among the several States. See, in this connection, Sherlock *v.* Alling, 93 U. S. 99; Smith *v.* Alabama, 124 U. S. 465; Chicago Railway Co. *v.* Solan, 169 U. S. 133; Richmond Railroad Company *v.* Tobacco Company, *id.* 311; St. Joseph Railroad Co. *v.* Palmer (Neb.) 22 L. R. A. 335; Hart *v.* Railway Co. 69 Iowa 485; Gulf Railroad Co. *v.* Crossland, (Tex.) 33 S. W. 290; Williams *v.* Fears, 110 Ga. 584, affirmed in 179 U. S. 270.

2. Having reached the conclusion that the demurrer was properly overruled, it becomes necessary to determine whether the court erred in refusing to grant a new trial. Complaint is made that the court erred in excluding the evidence of the plaintiff Murphey, to the effect that the fruit shipped belonged to his wife. There was no error in excluding this evidence. The plaintiffs were the shippers. They were the persons with whom the contract of affreightment was made. They were the consignors, and it is well settled that the shipper or consignor can bring an action against the carrier for a breach of the contract of affreightment, without reference to whether the shipper has any property, either general or special, in the goods shipped. See Carter *v.* Southern Railway Company, 111 Ga. 38. In Lockhart *v.* Railroad Company, 73 Ga. 472, the plaintiff was not only not the shipper, but had no interest whatever in the goods. The act under which this suit is brought gives the right of action in terms to the shipper, and provides that the carrier shall be liable for the value of the goods lost or damaged, in the same manner and to the same extent as if the loss or damage occurred on its
65 own line. As the shipper had the right, in the event of loss or damage on its own line, to bring an action against the carrier under the contract, under the statute the shipper had a right to bring an action against the initial carrier upon its failure to com-

ply with the terms of the statute. Of course, when the shipper recovers he will hold the recovery in trust for the true owner, and there can be no additional recovery by the owner under this statute.

3. It is contended further that the court erred in rejecting certain evidence consisting of correspondence between the claim agent of the defendant and officers and agents of the lines over which the grapes were transported from Barnesville, Georgia, to Omaha, Nebraska; the correspondence consisting of letters and telegrams; and also the evidence of the claim agent that he had charge of the tracing of the freight in controversy, that he instituted the search asked for by the plaintiffs, that he offered them the information which he had obtained just one day after the expiration of the thirty days required by the law, and that it was utterly impossible to have sooner obtained the information. While the evidence offered showed a mass of correspondence by wire and by mail, we can not say that the evidence would have authorized a finding that it was impossible for the defendant to have obtained the information within thirty days. The company seems to have obtained the information, or at least a portion of it, within thirty-one days, and it would indeed be a strain to say that it was a matter of impossibility to have obtained it earlier than this. In these days when so much can be accomplished in so short a time, and when those in charge of the affairs of the great railways of the country are in thorough communication with each other by the use of their own lines of telegraph as well as the lines of regular telegraph companies, it does seem to us to be an extraordinary claim to be made in behalf of such companies that it is an impossibility, with all of the means at their command, to locate the place at which a car-load of freight was lost or damaged in transit from Georgia to Nebraska, when such car can be transported between the two points within four or five days. If such impossibility exists, it is evidence only that those in charge of
66 the affairs of the company have either not sufficient employees to transact the business required of the companies, or the system by which they operate is defective at some point. We have reached the conclusion that the statute is a reasonable regulation, and the companies who are amenable to it must adopt some system by which the statute can be complied with. Especially so, when there can be no question that it is within the power of the company to adopt a system by which the information can be obtained within the time fixed by law. It may be said that the ruling we now make imposes a very great burden upon railroad companies. Railroad companies are not required to issue through bills of lading beyond their own lines, and if they do not desire to bear the burden incident to through bills of lading of this kind, the remedy is in their own hands. If a case could arise where it appeared that it was really impossible for the initial carrier to secure the information within the time fixed by the statute, another and quite a different question from the one now before us would be presented. The evidence offered in the present case did not make out a case of impossibility under any view of it. It simply demonstrated

that the system of the defendant was inadequate, and railroad companies, like every one else, must adapt their systems of business to the law of the land.

4. The foregoing discussion disposes of all of the grounds of the motion for a new trial that require special notice. The requests to charge were properly refused, and the portions of the charges complained of were not erroneous for any of the reasons set forth in the motion. Counsel stated in the argument that they did not raise any question as to the amount of the verdict, nor is there anything in their briefs in reference to this subject. We find no error which would have required the judge to grant a new trial.

Judgment affirmed.

All the justices concurring, except Lumpkin, P. J. absent and Simmons C. J. disqualified.

67 Clerk's office, supreme court of State of Georgia.

ATLANTA, GA., *February* 17, 1903.

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the bill of exceptions & transcript of record, opinion and judgment of supreme court of Georgia in the case of The Central of Georgia Railway Company *v.* A. O. Murphey & Hunt, as appears from the files and records of this office.

Witness my signature and the seal of said supreme court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clk S. C., Ga.

68 Clerk's office, supreme court of Georgia.

ATLANTA, GA., *March 17th*, 1903.

I hereby certify that the foregoing pages hereto attached contain the original writ of error from the Supreme Court of the United States to the supreme court of Georgia, the original citation and copies of the petition for writ of error and of bond of petitioner; also, copies of the original bill of exceptions, transcript of record and of the judgment and opinion of the supreme court of Georgia in the case of The Central of Georgia Railway Company, plaintiff in error and A. O. Murphey & Hunt, defendants in error, as appears from the records and files of this office.

Witness my signature and the seal of said supreme court of Georgia hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Endorsed on cover: File No. 19059. Georgia supreme court. Term No. 408. The Central of Georgia Railway Company, plaintiff in error, *vs.* A. O. Murphey and J. L. Hunt, partners doing business as A. O. Murphey & Hunt. Filed August 29th, 1903.